

## **SUBCOMMITTEE NO. 4**

## **Agenda**

**Michael J. Machado, Chair**  
**Robert Dutton**  
**Christine Kehoe**



**Thursday, March 22, 2007**  
**10:00 a.m. or Upon Adjournment of Session**  
**Room 112**

<b><u>Item</u></b>	<b><u>Department</u></b>	<b><u>Page</u></b>
8120	Commission of Peace Officer Standards and Training .....	2
1690	Alfred E. Alquist Seismic Safety Commission .....	6
0855	Gambling Control Commission .....	8
0552	Office of the Inspector General .....	11
0820	Department of Justice.....	14

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### **State Administration—General Government—Judiciary—Transportation**

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## 8120 Commission of Peace Officer Standards and Training

**Background.** The Commission on Peace Officer Standards and Training (POST) is responsible for raising the competency levels of law enforcement officers in California by establishing minimum selection and training standards, improving management practices, and providing financial assistance to local agencies relating to the training of law enforcement officers.

**Governor's Budget.** The Governor's budget proposal includes \$62.7 million from special funds to support POST in the budget year. This is a nearly 8 percent increase over estimated expenditures in the current year. This increase is due primarily to a budget proposal to replace inoperable driving simulators used to train law enforcement.

<b>Summary of Expenditures</b>				
(dollars in thousands)	2006-07	2007-08	\$ Change	% Change
<b>Type of Expenditure</b>				
Standards	\$5,396	\$5,438	\$42	0.8
Training	30,727	35,290	4,563	14.9
Peace Officer Training	21,944	21,944	0	0.0
Administration	6,036	6,167	131	2.2
<i>less distributed Administration</i>	<i>-6,036</i>	<i>-6,167</i>	<i>-131</i>	<i>0.0</i>
Total	\$58,067	\$62,672	\$4,605	7.9
<b>Funding Source</b>				
Peace Officers' Training Fund	56,806	61,413	4,607	8.1
<i>Budget Total</i>	<i>56,806</i>	<i>61,413</i>	<i>4,607</i>	<i>8.1</i>
Reimbursements	1,259	1,259	0	0.0
Total	\$58,065	\$62,672	\$4,607	7.9

### 1. Replacement of Driving Simulators

**Background.** The POST has 22 Regional Skills Training Centers around the state that are equipped with Driving and Force Options Simulators, equipment for Defensive Tactics Training, and a Skid Car to teach Advanced Car Control techniques. Driving simulators provide students practice in sharpening their judgment and decision-making skills for routine patrol and emergency response situations. This training is an important part of the perishable skills training required every two years.

The commission indicates that the driving simulators are typically under warranty for four years, with an option to renew the warranty for a few additional years. After that time the department may have a more difficult time servicing the simulators if they malfunction or breakdown. Of the 22 driving simulators the commission owns, 15 are over six years old. Of these 15, six are currently inoperable and the remainder is past warranty.

**Governor's Budget.** The Governor's budget proposal includes \$3.5 million (\$1.4 million one-time) special funds to replace the eight oldest Law Enforcement Driving Simulators and purchase 14 warranties for the remaining driving simulators. The \$2.1 million that is proposed as ongoing will fund appropriate warranties and an annual replacement schedule for the driving simulators.

**Staff Recommendation.** Staff recommends that the Subcommittee approve this budget request as proposed.

## 2. Development of Internet-Based Training

**Background.** The POST Commission has been developing technology-based training systems for law enforcement for over a decade. The commission has developed a learning portal that allows law enforcement to access the portal and various training programs on the Internet. This system is helping state and local law enforcement improve the efficiency of the commission's training program by reaching a larger number of students with fewer resources. The commission indicates that it finds technology-based training especially useful for implementing legislative mandated training.

The POST program mandates 24 hours of continuous professional training every two years. The commission is also using its learning portal to track individual records of on-line training completed.

**Governor's Budget.** The Governor's budget proposal includes \$650,000 (one-time) in special funds to continue the development of the Internet-based learning portal. This funding will be support the following efforts:

- Convert and update existing CD-ROM courses on domestic violence and basic narcotics investigation to a training module on the commission's Internet-based learning portal. This will result in savings of about \$50,000 annually since the commission will no longer be reproducing and distributing CD-ROMs.
- Create new Internet-based training modules for the Internet-based learning portal for various mandated training requirements. The commission indicates that it may develop new courses for racial profiling, blood-borne pathogens, child abuse, and a module to train instructors that teach other professional development courses.
- Create an online survey mechanism to receive direct input from law enforcement professionals regarding training needs.

**Staff Recommendation.** Staff recommends that the Subcommittee approve this budget request as proposed.

### 3. Increase Audit Capability

**Background.** The POST commission reimburses local law enforcement agencies for participating in training. The rate of reimbursement is set for six categories of expense:

- Subsistence – locals are paid \$128 to \$189 per day for subsistence depending on the location of the training;
- Basic Course Subsistence – locals are paid \$50 per day for subsistence during basic training, which is typically a 16 week course;
- Commuter Lunch – locals are provided \$8 per day for lunch;
- Travel – locals are paid \$.26 per mile for travel expenses;
- Tuition – locals are reimbursed 100 percent for the cost of the training; and
- Back-fill – locals are reimbursed 100 percent actual salary cost at overtime rate for local agency costs related to backfilling for the law enforcement professional that is in training.

The reimbursement process is complicated and over the past several years the commission has contracted with the State Controller's Office (SCO) to conduct audits of local law enforcement agencies to ensure that reimbursements submitted by local law enforcement are accurate. The SCO has received \$100,000 annually over the last several years and has completed on average ten audits annually. At this pace, the over 600 law enforcement agencies will be audited once every 60 years. The commission is also prohibited for auditing any large agencies given the small size of its audit contract.

**Governor's Budget.** The Governor's budget proposal includes \$250,000 in special funds to increase the contract it has with the State Controller's Office to audit local law enforcement to ensure that local agencies are submitting appropriate reimbursement claims. This augmentation will allow the Controller's Office to complete 30 to 35 audits annually, thereby auditing every agency once within a 20-year period.

**Staff Recommendation.** Staff recommends that the Subcommittee approve this budget request as proposed.

### 4. Additional Positions

**Governor's Budget.** The Governor's budget proposal requests three new positions to support growing workload at POST. The positions requested include:

- Key Data Operator – needed to maintain accurate peace officer training records in the Records Unit.
- Program Technician II – needed for timely processing of professional certificates for peace officers and dispatchers in the Certificates Unit.
- Accounting Technician – needed for timely reimbursements to local agencies within the POST program in the Reimbursements Unit.

**Staff Comments.** Staff finds that the department currently has a three month backlog in maintaining accurate peace officer training records. However, as the department transitions to the automated course certification program in the current year (see discussion about Internet-

based training above), there may be less need for data operators for this function. However, staff finds that, in the interim, while the tracking method is in transition this position is needed.

The POST has consistently had a three to seven month backlog for processing professional certificates. Furthermore, a new dispatcher certificate was recently added resulting in a significant number of new certificates that need issued. Staff finds that the backlog and additional certificate workload is sufficient justification for an additional position in the commission's Certificates Unit.

The POST has consistently had a four month backlog for processing reimbursements to local law enforcement agencies. Staff finds that this backlog is often exacerbated by turnover at the commission and at local law enforcement agencies. Staff finds that the additional position is needed to reduce the backlog for reimbursing local law enforcement agencies for POST training.

**Staff Recommendation.** Staff recommends that the Subcommittee approve this budget request as proposed.

## 5. Tolerance Training

**Background.** The Museum of Tolerance in Los Angeles has created the Tools for Tolerance professional development program. This program aims to assist law enforcement professionals in exploring the evolving role of law enforcement in an increasingly diverse and complex society. These courses examine the process of building trust and respect and attempt to enhance critical thinking skills in the areas of diversity, ethics, and values. The courses range from a day-long to four-day sessions and utilize the exhibits at the Museum of Tolerance in the training.

**Governor's Budget.** The Governor's budget proposes \$2 million in special funds to support Tools for Tolerance training for local law enforcement agencies authorized to receive training reimbursements from the Peace Officers' Training Fund.

**Staff Comments.** Staff finds that the Museum of Tolerance has developed, in conjunction with POST, a unique professional development program that could be useful for other professionals in state law enforcement, including the Department of Corrections and Rehabilitation and the California Highway Patrol. However, currently, the budget bill language limits the law enforcement professionals that can participate in this program to those that receive training reimbursements from the Peace Officers' Training Fund.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following action:

- Direct staff, the LAO, and DOF to develop budget bill language that would authorize reimbursements to allow other state law enforcement, including the Department of Corrections and Rehabilitation and the California Highway Patrol to participate in Tools for Tolerance training if appropriate funding is available.

## 1690 Alfred E. Alquist Seismic Safety Commission

**Background.** The Seismic Safety Commission is the primary state agency responsible for reducing earthquake risk to life and property. The Commission investigates earthquakes, researches earthquake-related issues and reports, and recommends to the Governor and Legislature policies and programs needed to reduce earthquake risk. Legislation (SB 1278, Alquist) enacted in 2006, renamed, in memoriam, the Seismic Safety Commission to the Alfred E. Alquist Seismic Safety Commission and moved it under the purview of the State and Consumer Services Agency.

**Governor's Budget.** The Governor's budget proposal includes \$3.2 million from special funds for the support of the Commission. This is about \$2 million more than estimated for expenditure in the current year. This is primarily due to a new research grant program funded from the settlement of a lawsuit. (The totals included in the table below for 2006-07 include the half-year estimated expenditures for the old Seismic Safety Commission under the organization code of 8690.)

<b>Summary of Expenditures</b>				
(dollars in thousands)	2006-07	2007-08	\$ Change	% Change
<b>Type of Expenditure</b>				
Commission	\$1,206	\$3,194	\$1,988	164.8
Total	\$1,206	\$3,194	\$1,988	164.8
<b>Funding Source</b>				
Special Funds	\$1,131	\$1,117	-\$14	-1.2
<i>Budget Total</i>	<i>1,131</i>	<i>1,117</i>	<i>-14</i>	<i>-1.2</i>
Reimbursements	75	77	2	2.7
Special Deposit Fund	-	2,000	-	-
Total	\$1,206	\$3,194	\$1,988	164.8

### 1. New Grant Program

**Background.** The California Research Assistance Fund (CRAF) is a nonprofit corporation that was incorporated in the 1990s and was funded from settlements between the Department of Insurance and insurance companies after the Northridge earthquake. The Attorney General filed a lawsuit against CRAF in 2000 to freeze CRAF's remaining funds and dissolve the corporation. The parties entered into a stipulated judgment whereby CRAF would dissolve and all of its assets

would be distributed to the Seismic Safety Commission. The CRAF currently has about \$6 million in assets that will be transferred to the commission once all outstanding issues are settled. The commission indicates that the only outstanding issues are the termination of the receivership and the final determination by the Internal Revenue Service of CRAF's application for tax exempt status.

**Governor's Budget.** The Governor proposes to expend \$2 million special funds for a new grant program to fund research topics selected from the Commission's Earthquake Research Plan. The grant program is funded from the dissolution of CRAF. The commission expects that it will receive \$6 million and plans on allocating the majority of the funding to research. In the budget year, \$200,000 will support the administration of the grant program.

**Current Status.** The Commission has established a Program Monitoring Committee to oversee the grant program. The Attorney General is on this committee, along with the commission members, researchers, and engineers. The department indicates that it has not made final decisions about what the research will entail, but that it may include performance of Field Act buildings and/or other emergency procedures, such as the drop, cover, and hold on guidelines.

**Staff Recommendation.** Staff recommends that the Subcommittee approve the budget item as proposed.

## 0855 Gambling Control Commission

**Background.** The California Gambling Control Commission (GCC) is the primary state agency that regulates and licenses personnel and operations of the state's gambling industry. The commission regulates 55 tribal casinos and more than 100 gambling establishments and cardrooms.

**Governor's Budget.** The Governor's budget allocates nearly \$137 million to GCC. This is a slight decrease from estimated expenditures in the current year.

<b>Summary of Expenditures</b> (dollars in thousands)				
	2006-07	2007-08	\$ Change	% Change
<b>Type of Expenditure</b>				
Commission	\$142,443	\$136,827	-\$5,616	-3.9
Total	\$142,443	\$136,827	-\$5,616	-3.9
<b>Funding Source</b>				
Special Funds	\$40,459	\$40,327	-\$132	-0.3
<i>Budget Total</i>	<i>40,459</i>	<i>40,327</i>	<i>-132</i>	<i>-0.3</i>
Indian Gaming Rev Share Trust Fund	101,984	96,500	-5,484	-5.4
Total	\$142,443	\$136,827	-\$5,616	-3.9

### 1. Proposed Tribal-State Compacts

**Background.** As of March 2006, 53 tribes operate 54 casinos with Class III games in California. Class III games are commonly referred to as Nevada-style games, which include slot machines, electronic games of chance, and many banked card games like blackjack. These casinos operate under tribal-state compacts negotiated by the Governor and ratified by the State Legislature. Proposition 1A amended the State Constitution in 2000 to authorize federally recognized Indian tribes to operate certain type of gambling on Indian lands subject to compacts negotiated by the Governor and ratified by the Legislature.

The Legislature has ratified 66 tribal-state compacts since the passage of Proposition 1A. These compacts result in payments by the tribes to various state accounts. In 2005-06, revenues from the tribal-state compacts included the following:

- General Fund - \$27 million to support any state activity.
- Indian Gaming Revenue Sharing Trust Fund (RSTF) - \$33 million to pay \$1.1 million per year to each non-compact tribe.



- Indian Gaming Special Distribution Fund (SDF) - \$140 million to fund shortfalls in the RSTF, gambling addiction programs, regulatory costs, grants to local governments impacted by tribal casinos, and other purposes allowed by state law.
- Designated Account for Transportation Bond - \$101 million to repay state transportation accounts for loans made to benefit the General Fund in prior years.

**New Tribal-State Compacts.** The Governor has negotiated new or amended Class III compacts with nine tribes. To date, these compacts have not been ratified by the Legislature. The proposed new compacts are those with the following four tribes:

- Lytton Rancheria of California – 2,500 Class III machines in Contra Costa County.
- Big Lagoon Rancheria – 2,250 Class III machines in Humboldt County.
- Los Coyotes Band of Cahuilla and Cupeno Indians – 2,250 Class III machines in San Diego County.
- Yurok Tribe of the Yurok Reservation – 99 Class III machines in Del Norte and Humboldt Counties.

The Governor also has negotiated amendments to existing compacts with the following five tribes:

- Agua Caliente Band of Cahuilla Indians – 5,000 Class III machines in Riverside County.
- Pechanga Band of Luiseno Indians – 7,500 Class III machines in Riverside County.
- San Manuel Band of Mission Indians – 7,500 Class III machines in San Bernardino County.
- Morongo Band of Mission Indians – 7,500 Class III machines in Riverside County.
- Sycuan Band of the Kumeyaay Nation – 5,000 Class III machines in San Diego County.

**Revenue Impacts.** The amendments to the existing compacts will impact the monies deposited into various state accounts by the tribes. Specifically, the new compacts would result in some tribes depositing money for the first time in the General Fund. The compacts would also increase contributions to the RSTF and decrease significantly payments to the SDF. However, because tribal financial information is confidential, it is difficult to estimate the amount that these funds will be impacted.

**Governor's Budget.** The Governor's budget proposal includes over \$500 million in new revenues to the General Fund from the five existing tribal-state compacts that the Governor proposes to amend. The budget does not reflect an increase in the revenues to the RSTF or a reduction in revenues to the SDF consistent with the amended compacts.

**LAO Issues.** The LAO finds that the Governor's revenue estimate for the amended tribal-state compacts is overstated by about \$300 million in the budget year. The LAO indicates that limited information has been provided by the administration about how quickly the tribes plan on phasing in the new gaming devices. The latter assumption is critical to determining how much revenue will be received in the budget year. Furthermore, the Legislature has not ratified the amended compacts and will need to do so quickly to receive additional tribal gaming revenues in the budget year. However, even if the Legislature does act quickly, revenues will very likely still be less than estimated in the Governor's budget because the budget relies on optimistic assumptions about the phase-in of the new gaming devices.

The LAO has also indicated to staff that the administration has failed to adjust the revenues to the RSTF and SDF based on the amended compacts. The LAO estimates that revenues to the SDF would decline by over 50 percent under the terms of the amended compacts. However, because tribal financial information is confidential it is difficult to estimate the decline with specificity. Furthermore, the LAO notes that if the Legislature ratifies the proposed compacts, it may need to consider the current funding priorities of the SDF in statute, as well as the appropriation amounts for various purposes included in the annual budget act.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Request that DOF provide an updated General Fund revenue estimate at the time of May Revision.
- Request that DOF provide an updated revenue estimate for the Special Distribution Fund and the Revenue Sharing Trust Fund at the time of May Revision, including at least two estimates, which assume that (1) the Legislature does not ratify the five proposed compact amendments listed above and (2) the Legislature does ratify the proposed compact amendments.

## 0552 Office of the Inspector General

**Background.** The Office of the Inspector General (OIG) oversees the state's correctional system through audits, special reviews, and investigations of the California Department of Corrections and Rehabilitation (CDCR). The Office is also charged with evaluating the qualifications of candidates being considered by the Governor for appointment to warden of a correctional facility or superintendent of a juvenile facility. The Office also monitors internal affairs investigations conducted by CDCR to ensure they are performed in a timely and professional manner.

**Governor's Budget.** The Governor proposes \$18.6 million General Fund to support the OIG. This is nearly 18 percent more than is estimated for expenditure in the current year. This increase is primarily due to a budget proposal to expand the types of investigations the OIG completes to include a facility inspection program and follow-up to critical incidents.

<b>Summary of Expenditures</b>				
(dollars in thousands)	2006-07	2007-08	\$ Change	% Change
<b>Type of Expenditure</b>				
State Operations	\$15,814	\$18,638	\$2,824	17.9
Total	\$15,814	\$18,638	\$2,824	17.9
<b>Funding Source</b>				
General Fund	\$15,814	\$18,638	\$2,824	17.9
<i>Budget Total</i>	<i>15,814</i>	<i>18,638</i>	<i>2,824</i>	<i>17.9</i>
Total	\$15,814	\$18,638	\$2,824	17.9

### 1. New Audit Functions

**Background.** The OIG's Bureau of Audits and Investigations conducts audits of state prison wardens and correctional facility superintendents; special reviews and audits of correctional agencies and programs; and investigations into alleged misconduct by correctional agencies and employees.

The office is mandated to audit each correctional institution once every four years. The office is also mandated to conduct "baseline" audits of each warden one year after appointment. In addition, to these audits the OIG may also conduct a management review audit of any correctional facility, program, or function within the Department of Corrections and Rehabilitation.

**Governor's Budget.** The Governor proposes \$1.8 million General Fund to expand the audit functions of the OIG. These funds are proposed to be used to expand the types of investigations

conducted by the OIG to include a facility inspection program and follow-up to critical incidents. The administration proposes to redirect \$1.8 million from CDCR's budget to fund this activity.

**LAO Recommendation.** The LAO finds that, historically, the state's prison infrastructure has been poorly maintained, especially when it comes to preventative maintenance. This has resulted in large-scale special repairs and equipment replacements that must be funded, in some cases, to continue to operate the facility. Furthermore, the LAO finds that the prison infrastructure is aging, about one-third of the institutions are over 40 years old, and that overcrowding has also created additional stress on the institutions.

The LAO also finds that responsibilities for maintenance are not well managed or well organized at CDCR, which has further contributed to the decay of the institutions. Officially, the warden at each institution is responsible for maintaining the institution. However, each warden has a wide range of responsibilities and little training related to maintenance issues, which has resulted in maintenance issues receiving a lower priority than other demands for prison resources.

The LAO makes several recommendations related to maintenance of CDCR institutions, but specifically they recommend that the Legislature modify state law to require that management audits conducted on wardens include an evaluation of the performance of wardens in the maintenance of the facilities they are managing. Furthermore, the LAO recommends approving this proposal and concurs with the administration's strategy to redirect existing resources from CDCR's budget.

**Staff Comments.** Staff finds that the additional audit resources in this budget proposal would enhance the OIG's ability to address chronic facility problems at the institutions as recommended by the LAO, but also improve the oversight and review of critical incidents. Often timing is critical in understanding the factors that lead up to a critical incident. The OIG should be adequately staffed to ensure some review of the critical incidents that occur annually within CDCR.

Furthermore, while staff finds that additional audit resources are justified to augment the OIG's budget it is not clear that these funds should be redirected from CDCR's budget. Staff finds that the unallocated reduction to CDCR's operations should be evaluated separately from this budget proposal.

**Staff Recommendation.** Staff recommends that the Subcommittee approve this budget proposal.

## 2. Review of Candidates for Superintendent of Juvenile Correctional Facilities

**Background.** Legislation (AB 971, Jerome Horton), enacted in 2006, requires that the OIG review candidates for appointment as superintendent of a juvenile correctional facility. This is parallel to the process established for wardens pursuant to the Governor's Reorganization Plan 1 of 2005 (SB 737, Romero) that reorganized various departments that were reorganized into

CDCR. After the reorganization, candidates for warden or superintendent were no longer subject to confirmation by the Senate.

**Governor's Budget.** The Governor proposes a little less than \$1 million General Fund to implement AB 971. These funds would be used to support five new positions that would be responsible for vetting the candidates for superintendent as required by AB 971, but would also be used to expand the management audits conducted of adult institutions to include the juvenile institutions as well. For example, these resources would be used to conduct "baseline" management audits one year after the appointment of the superintendent and additional quadrennial audits of the institutions.

**Staff Comments.** Staff finds that the fiscal analysis of this bill in 2005 was considerably less (about \$23,000 in annual costs) than what is being requested. However, staff notes that the OIG did not have experience in vetting wardens when this analysis was prepared. Since then, the OIG has vetted several warden candidates under its new responsibilities directed by SB 737 (Romero) it now has actual experience and cost data on which to base their estimates.

Furthermore, staff also finds that the OIG is proposing to take on additional tasks not required by the legislation. For example, the OIG is proposing to engage in the "baseline" management audits one year after the appointment of the superintendent and the additional quadrennial audits of the institutions. These functions were not handled by the OIG in the past when the Division of Juvenile Justice was a separate stand-alone agency (California Youth Authority).

Furthermore, staff finds that management audits of the adult institutions have been helpful in identifying problems at individual institutions. Given the long history of problems at the state's juvenile institutions, staff finds that additional audit oversight may be helpful in identifying management problems that are inhibiting change at the institutions.

**Staff Recommendation.** Staff recommends that the Subcommittee approve this budget proposal.

## 0820 Department of Justice

**Background.** The Department of Justice (DOJ) is under the direction of the Attorney General. The Attorney General is elected by the public and is required by the California Constitution, as the chief law officer of the state, to ensure that California's laws are uniformly and adequately enforced. The DOJ also serves as the state's primary legal representative and provides various services to assist local law enforcement agencies. The DOJ is organized into the following seven programmatic functions:

- **Civil Law**—Represents the state in civil matters and is organized in the following sections: Business and Tax; Correctional Law; Employment, Regulation and Administration; Government Law; Health, Education and Welfare; Health Quality Enforcement; Licensing; and Tort and Condemnation.
- **Criminal Law**—Represents the state in all criminal matters before the Appellate and Supreme Courts. The Criminal Law Program also assists district attorneys and conducts criminal investigations and prosecutions where local resources are inadequate.
- **Public Rights**—Provides legal services to all state agencies and constitutional officers and is organized in the following issue areas: Civil Rights and Enforcement; Charitable Trusts; Natural Resources; False Claims; Energy and Corporate Responsibility; Indian and Gaming Law; Environmental Law; Land Law; Consumer Law; Antitrust Law; and Tobacco Litigation Enforcement.
- **Law Enforcement**—Provides various services to local law enforcement and is organized into the following five elements: (1) the Bureau of Investigation conducts criminal investigations of statewide importance; (2) the Bureau of Narcotic Enforcement provides leadership, coordination, and support to law enforcement to combat the state's narcotic problem; (3) the Bureau of Forensic Services provides evaluation and analysis of physical crime evidence for state and local law enforcement; (4) the Western States Information Network provides an automated database of suspected criminal elements to law enforcement in neighboring states; and (5) the Criminal Intelligence Bureau shares criminal intelligence regarding organized crime, street gangs, and terrorist activity to other law enforcement agencies.
- **California Justice Information Systems**—Provides criminal justice information and identification services to law enforcement, regulatory agencies, and the public.
- **Gambling Control**—Regulates legal gambling activities and ensures that gambling on tribal lands is conducted in conformity with a gaming compact.
- **Firearms**—Provides oversight and regulation of firearms in California.

**Governor's Budget.** The Governor's budget proposal includes \$825 million to support DOJ in 2007-08. General Fund support for the department is about \$403 million, which is about \$4.8 million less than what is estimated for expenditure in the current year. This reduction is primarily due to one-time expenditures in the current year.

<b>Summary of Expenditures</b> (dollars in thousands)	2006-07	2007-08	\$ Change	% Change
<b>Type of Expenditure</b>				
Directorate and Administration	\$29,195	\$29,886	\$691	2.4
<i>less distributed Administration</i>	<i>-29,195</i>	<i>-29,886</i>	<i>-691</i>	<i>0.0</i>
Legal Support and Tech Admin	52,191	53,425	1,234	2.4
<i>less distributed Legal and Tech</i>	<i>-52,191</i>	<i>-53,425</i>	<i>-1,234</i>	<i>0.0</i>
Executive Programs	16,278	16,222	-56	-0.3
Civil Law	133,391	145,990	12,599	9.4
Criminal Law	111,214	123,525	12,311	11.1
Public Rights	90,397	91,859	1,462	1.6
Law Enforcement	227,922	224,604	-3,318	-1.5
California Justice Information Services	182,731	185,961	3,230	1.8
Gambling	19,180	20,408	1,228	6.4
Firearms	18,537	16,653	-1,884	-10.2
<b>Total</b>	<b>\$799,650</b>	<b>\$825,222</b>	<b>\$25,572</b>	<b>3.2</b>
<b>Funding Source</b>				
General Fund	\$407,478	\$402,676	-\$4,802	-1.2
Special Funds	190,633	208,791	18,158	9.5
<i>Budget Total</i>	<i>598,111</i>	<i>611,467</i>	<i>13,356</i>	<i>2.2</i>
Federal Trust Fund	44,745	41,259	-3,486	-7.8
Reimbursements	44,484	43,099	-1,385	-3.1
Special Deposit Fund	2,662	2,687	25	0.9
Domestic Violence Reimbursements	1,918	1,918	0	0.0
Ratepayer Relief Fund	12,281	7,170	-5,111	-41.6
Legal Services Revolving Fund	95,449	117,622	22,173	23.2
<b>Total</b>	<b>\$799,650</b>	<b>\$825,222</b>	<b>\$25,572</b>	<b>3.2</b>

## 1. Proposition 69 – DNA Program Implementation

### **Background**

**DNA Program Created by Proposition 69.** In November 2004, the voters of California passed the DNA Fingerprint, Unsolved Crime, and Innocence Protection Act (Proposition 69) into law. This Act requires the collection of DNA from the following persons for inclusion in the state's DNA Databank:

- Adults and juveniles convicted of any felony offense.
- Adults and juveniles convicted of any sex offense or arson offense, or an attempt to commit any such offense (not just felonies).
- Adults arrested for or charged with felony sex offenses, murder, or voluntary manslaughter (or the attempt to commit such an offense).

Beginning in 2009, DNA will be collected from all adults arrested for or charged with any felony offense.

The initiative requires the use of buccal swab samples to produce a DNA profile. The initiative also requires DOJ to analyze and upload certain DNA samples into the CAL-DNA databank and the Combined DNA Index System (CODIS) databank maintained by the FBI within six months. If DOJ does not upload certain DNA samples into these databanks within six months, they are required to contract with public or private labs to ensure that DNA samples are processed in a timely manner.

**Status of Program.** The DOJ estimates that it will receive 240,000 DNA samples in the current year. It also estimates that it will analyze and upload 365,000 DNA samples in the current year, thereby reducing its backlog of samples by over 100,000. The DOJ estimates that it will continue to have a backlog of about 171,000 samples by the end of the current year, but this is a significant reduction from the backlog in 2005-06.

**DNA Program Financing.** The initiative created a \$1 criminal penalty for every \$10 in fines, penalties, and forfeitures collected by the courts for criminal offenses. This funding was split between the state and the counties to support Proposition 69 activities. The initiative also required that \$7 million be loaned to the program for “start up” costs associated with the initiative. The criminal penalty revenues allocated to the state are deposited in the DNA Identification Fund and in 2005-06 this fund received \$8.6 million in revenues.

The revenues generated from the criminal penalty charge established by the initiative have been consistently short of what is needed to fully fund the program. Estimated expenditures for the DNA program in the current year are \$30.3 million. Therefore, the Legislature has added General Fund to backfill the program and the program has been funded at a level that has created a backlog of DNA samples that DOJ must analyze and upload. The initiative does not require the state to fully fund the requirements of Proposition 69 with General Fund monies if sufficient revenues are not generated to support this program.

In order to address the structural shortfall in the DNA Identification Fund, the Legislature enacted an additional \$1 criminal penalty for every \$10 in fines, penalties, and forfeitures collected by the courts for criminal offenses effective July 2006.

### ***Governor’s Budget***

**DNA Program Summary.** The Governor’s budget proposes \$32.2 million from the DNA Identification Fund for support of the DNA Program in the budget year. The budget does not propose any General Fund monies to support the program, but does include budget bill language



that grants the Department of Finance the authority to provide additional General Fund revenues to the DNA Program if penalty revenues fall short of the \$32 million appropriated in the budget.

**DNA Live Scan Automation Project.** The Governor's proposed budget for the DNA Program is about \$2 million more than what is estimated for expenditure in the current year. This additional funding is proposed to support the implementation of the DNA Live Scan Automation Project that would allow local agencies to electronically submit offender information and thumbprints. The DOJ indicates that this would improve the efficiency of the DNA Program by eliminating the need to spend time on basic data entry to link DNA samples and subject data. The department proposes that \$153,000 of these monies be for ongoing maintenance of the system and expects that the system could be operational by July 2008.

**Infrastructure Bond.** The Governor's budget proposal includes \$400 million in lease-revenue bonds for a new facility to house a new DNA laboratory and to co-locate other DOJ functions that are currently housed in leased space and other facilities around the Sacramento area.

### **LAO Issues**

The LAO has identified several issues for legislative consideration related to the DNA Program at DOJ.

**Revenue Estimate Unrealistic.** The LAO finds that the DNA Identification Fund revenue estimate is unrealistic. The DOJ estimated, in November 2006, that the state would receive \$18.6 million in DNA Identification Fund revenues in the budget year. This is double what the department has received in prior budget years. Furthermore, the department indicates that in the first six months of the current year it has received only \$3.7 million in revenues to this fund, including revenues from the second \$1 criminal penalty assessed by the Legislature effective July 2006. Therefore, the LAO finds that it is risky to assume that the department will receive the \$18.6 million in DNA Identification Fund revenues in the budget year.

**Revenue Collection Should be Enhanced.** The LAO makes several suggestions to enhance the collection of DNA Identification Fund revenues from local governments. First, the LAO suggests that if revenues continue to fall short that the Legislature may wish to request that the Bureau of State Audits conduct an audit to investigate the collection and management of various penalty assessment funds at the county level. Furthermore, the LAO also suggests that local law enforcement agencies pay fees to offset part of the costs of services provided by DOJ's crime laboratories.

**Budgeting Method Should be Changed.** The LAO has concerns with the budget bill language proposed by the administration that delegates the Legislature's authority to appropriate funds to the Department of Finance. Specifically, the LAO finds that it is not appropriate to delegate this authority except for in specific emergency circumstances. The LAO finds that funding the DNA Program is not an emergency circumstance given the discretion granted by the initiative to fund this program only if sufficient state resources were available.

**Recruitment and Retention Issues Need Addressed.** The LAO has identified that 41 percent of DOJ's criminalist positions at the central DNA laboratory in Richmond, California were

vacant in February 2007. The LAO finds that these vacancies are directly impacting the department's ability to implement the DNA Program. Furthermore, a recent salary survey found that criminalists at local county DNA labs made salaries up to 72 percent more than at DOJ. The location of DOJ's laboratory in the Bay Area has also impacted its ability to recruit because of the relatively high cost of living in the Bay Area. The LAO suggests that the Legislature take action to address the high vacancy rates at the DOJ's DNA laboratory. This could include establishing additional recruitment and retention bonuses to fill the vacancies. However, the LAO suggests that the Legislature may also wish to evaluate ways to further automate the DNA Program and reduce the overall staffing needed to run this program. The LAO finds that this is especially important given the large increase in workload that will occur in 2009 when the state starts collecting DNA for all adults arrested for felonies.

### ***LAO Recommendations***

**Funding the DNA Program.** The LAO recommends that the Legislature decide the level of support it wishes to provide to support the Proposition 69 program, including the level of General Fund it is willing to expend to support the program. If the Legislature wishes to fund the DNA Program at the level funded in the Governor's budget, the LAO recommends adding \$14 million in General Fund to DOJ's budget to support the program. Furthermore, it recommends eliminating the budget bill language that delegates the Legislature's appropriation authority to the Department of Finance.

The LAO also makes two recommendations to enhance non-General Fund revenues to support the DNA Program. First, the LAO recommends establishing fees on counties for the services DOJ's forensic labs provide to local law enforcement. The LAO also recommends auditing the counties' revenue collection process to improve collection of revenues that are supposed to flow to the state to support the DNA Program.

**Infrastructure Bond.** The LAO withholds recommendation on the infrastructure bond proposal to build a new DNA laboratory in the Sacramento region pending additional information from the administration.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Request that DOJ provide an updated revenue estimate for the DNA Identification Fund at May Revision.
- Hold open the DNA Live Scan budget proposal and request that a Feasibility Study Report be submitted to the Legislature for review.
- Request that DOJ submit additional information on steps taken to reduce the vacancies in its Criminalist positions.
- Request staff, the department, LAO, and DOF review strategies for enhancing the collection of DNA Identification Fund revenues, including requesting an audit.
- Request staff, the department, LAO, and DOF to develop a proposal to establish fees on local law enforcement and other agencies for services provided by DOJ to help offset the costs of the DNA Program.

## 2. Sexual Habitual Offender Program – DNA Analysis

**Background.** The Sexual Habitual Offender Program (SHOP) Fund is supported by fees received from various agencies requesting criminal history information regarding an application for employment or licensing and court-ordered fines levied on persons convicted of certain sexual offender offenses.

**Governor’s Budget.** The Governor’s budget proposes to transfer \$694,000 from the Sexual Habitual Offender Program Fund to the General Fund for support of the DNA analysis required in this program because there are insufficient funds in the Sexual Habitual Offender Program to support all elements of this program.

**More Information Needed.** The SHOP fund supports the Sexual Habitual Offender program that evaluates the number of arrests and convictions for sex offenses and the length of sentences for repeat offenders. The SHOP fund also currently supports the Sexual Offender DNA Program, but under this budget proposal this program would be funded by the General Fund. Staff has not received basic information about this program and how it relates to the DNA collection program established by Proposition 69. Furthermore, it is unclear what other specific activities are supported by the SHOP fund. This information is critical in determining whether additional General Fund should be used to support this program as opposed to improving the overall efficiency of the department’s programs that promote public safety related to various sexual offenders.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Hold this issue open.
- Request that the department provide to the Subcommittee, as soon as possible, a list of all of the programs and activities currently supported by the SHOP Fund.
- Request that the department provide to the Subcommittee, as soon as possible, a description of all programs at DOJ that gather and track data related to this population of sexual offenders.
- Request that the department provide to the Subcommittee, as soon as possible, information about how the DNA program currently supported by the SHOP Fund is coordinated with the DNA program established by Proposition 69.

## 3. Sex Offender Registry: Megan’s Law Website

**Background.** The DOJ collects and maintains information on convicted sex offenders who must register in California. The department also makes specific information regarding serious and high-risk sex offenders available to law enforcement agencies and the public via the Megan’s Law Website. The Megan’s Law Website includes names, aliases, age, gender, race, physical description, photograph, convictions requiring registration, and residence address where last registered.

Legislation (AB 1849, Leslie), adopted in 2006, requires DOJ on or before July 1, 2010 to add additional information to the Megan’s Law Website. The additional information includes year of

conviction, year of release related to the offense that requires the person to register, and whether the offender was subsequently incarcerated for any other felony.

The legislature also adopted additional legislation (SB 1128, Alquist), in 2006, that requires DOJ to make additional changes to the Megan's Law Website. Specifically, it requires DOJ to ensure that only persons who qualify for exclusion based on the 2005 criteria be excluded from the Megan's Law Website. The legislation also requires DOJ to implement various other components of SB 1128.

**Governor's Budget.** The Governor's budget proposes \$250,000 from the General Fund in the budget year for consultants to implement the changes to the Megan's Law website as required by AB 1849. The budget proposes that \$211,000 is for one-time costs and \$39,000 will cover an ongoing maintenance contract for the added components.

The Governor's budget proposes \$517,000 from the General Fund in the budget for additional changes to the Megan's Law Website and to implement other requirements of SB 1128. The budget proposes that \$186,000 is for one-time costs and \$331,000 is for ongoing support for implementing provisions of SB 1128.

**LAO Recommendation.** The LAO withholds recommendation on \$517,000 in General Fund monies proposed to respond to statutory changes in state laws for the civil commitment of sexually violent predators (SVP) because it is based on caseload projections from the Department of Mental Health (DMH) which are subject to change. Furthermore, the LAO recommends that the proposal be reevaluated when updated estimates of the number of additional SVP commitments are provided by DMH at the time of the May Revision.

**Staff Comments.** Staff finds that little information has been provided regarding how these two proposals to modify the Megan's Law website will be coordinated. Also, it is unclear whether a Feasibility Study Report or Special Project Report is needed before these changes can be made.

Furthermore, the department's justification for the \$517,000 requested to implement SB 1128 is vague and it is unclear what activities will be funded with this money that will directly implement the directives in the legislation. In addition, as mentioned above, it is unclear how these programs interface with other sexual offender programs at the department.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Hold these issues open.
- Request that DOJ submit the appropriate Feasibility Study Reports and/or Special Project Reports or provide an update on the status of these projects to the Subcommittee by May Revision.
- Request that DOJ provide to the Subcommittee, as soon as possible, additional information on the different functions proposed to be funded that implement SB 1128.
- Request that DOJ submit a revised proposal at the time of May Revision based on updated projections of SVP commitments to DMH.

## 4. Major Database Redesign

**Background.** The DOJ maintains several databases that support local law enforcement. The department is currently undergoing redesigns of two of its major data systems. These efforts include the following:

- **Criminal Justice Information Systems.** This system will consolidate the information of three existing databases; the Domestic Violence Restraining Order System, the Stolen Vehicle/Automated Boat System, and the Wanted Persons System.
- **Violent Crime Information Network.** This system is the central repository of sex offender registration data and is the primary mechanism for which local law enforcement and the public can effectively monitor the whereabouts of registered sex offenders in their communities.

In the 2005-06 Budget Act, a five-year program was approved to fund the redesign of the California Justice Information System. The overall cost of the program was estimated at \$11.6 million, with \$373,000 in ongoing maintenance costs. The department indicates that because of delays in the first two years of implementing this redesign \$3.1 million in General Fund will be reverted to the General Fund. However, the department has also identified \$2.4 million in additional costs that are needed to complete the redesign over the next three years.

**Governor's Budget.** The Governor's budget proposal includes \$538,000 from the General Fund to support 6 three-year limited-term positions to assist in the redesign and renovation of the Criminal Justice Information System and the Violent Crime Information Network. Three positions would support the Criminal Justice Information System and another three positions would support the Violent Crime Information Network.

The Governor's budget proposal also includes \$1.7 million in General Fund to supplement \$2.8 million provided in the 2005-06 Budget Act to support the redesign of the Criminal Justice Information System in the budget year. These additional monies are requested to support 11 positions (5 limited-term positions), various information technology contracts, and equipment to continue the redesign of the Criminal Justice Information System.

**Staff Comments.** Staff finds that the department has a significant number of information technology projects and systems that it maintains. Furthermore, the department is in the middle of redesigning many of these systems. This has lead to some confusion over how these databases relate to each other and to other databases managed by the federal government and local law enforcement agencies.

Furthermore, staff finds that the department has not submitted the appropriate Feasibility Study Report or Special Project Report to the Legislature for the projects proposed to be funded in this budget proposal. These reports are needed prior to approving money for information technology projects proposed by any state agency.

Furthermore, it is unclear how the staff requested in this proposal will be utilized and what programs they will support. Staff has requested additional information and justification for this request, but has not received the information from the department.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Hold these issues open.
- Request that DOJ submit to the Subcommittee, by May Revision, a list of the databases it currently manages and what databases will be impacted by these proposals.
- Request that DOJ submit the appropriate Feasibility Study Reports and/or Special Project Reports or provide an update on the status of these projects to the Subcommittee by May Revision.
- Request that DOJ submit to the Subcommittee, by May Revision, additional information on how the new positions will be utilized in the database redesign project.

## 5. National Criminal History Improvement Program

**Background.** The DOJ is responsible for the compilation and dissemination of criminal history information submitted by various local agencies. The DOJ has received federal grants under the National Criminal History Improvement Program since the inception of the program in 1995. These monies have helped DOJ to improve the completeness, accuracy, and accessibility of the state's criminal history records.

**Governor's Budget.** The Governor's budget proposes \$900,000 in federal funds to support additional efforts to improve the completeness, accuracy, and accessibility of the state's criminal history records consistent with the National Criminal History Improvement Program. These funds will be used to support the following activities:

- Adding thumbprints to dispositions in four counties that are already submitting disposition data to DOJ electronically.
- Enabling additional courts to report dispositions to the DOJ electronically.
- Cleaning up disposition data submitted by the courts and developing new processes for transferring disposition data from the courts to DOJ.
- Define and publish specifications for law enforcement agencies to ensure data submitted complies with the federal Global Justice Extensible Markup Language Data Model infrastructure.
- Make machine readable data enhancements that will enable DOJ to comply with the Integrated Automated Fingerprint Identification System standard and the Federal Criminal Justice Information System Wide Area Network (transmission of disposition data).
- Convert automated disposition data to the Automated Criminal History System in three counties that are already submitting disposition data to DOJ electronically.

**Staff Comments.** Staff finds that the majority of the projects to be funded with these federal grant monies are information technology projects. It is unclear whether the department has acquired the appropriate Feasibility Study Reports or Special Project Reports for any of these projects. Furthermore, it is unclear how these efforts relate to other database and information technology projects at the department.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Hold this issue open.

- Request that DOJ submit the appropriate Feasibility Study Reports and/or Special Project Reports or provide an update on the status of these projects to the Subcommittee by May Revision.

## 6. California Criminalistics Institute

**Background.** The California Criminalistics Institute (CCI) was established by statute in 1986 to develop training and scientific methodologies for all law enforcement agencies. In 2000, at the request of the Governor's office, the department began meeting with representatives of the Los Angeles Policy Department Crime Laboratory, the Los Angeles Sheriff's Department Crime Laboratory and California State University, Los Angeles to assist in the design of a new Los Angeles laboratory. The department would like to establish a satellite training facility for CCI at the new Los Angeles crime laboratory.

**Governor's Budget.** The Governor's budget proposal includes \$489,000 from the General Fund to establish three new positions to establish a satellite training facility for CCI at the new Los Angeles Crime Laboratory.

**Staff Comments.** Staff finds that establishing a CCI training center in Southern California could have significant benefits to local law enforcement in Southern California. This center would improve access to training for local law enforcement in Southern California and reduce costs related to training.

Furthermore, at present, the department does not have an agreement with Los Angeles law enforcement to provide adequate space to staff a satellite training facility.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Hold this item open.
- Request additional information, before May Revision, on the department's ability to enter into agreement with Los Angeles law enforcement agencies for the space to establish a satellite training facility for CCI.

## 7. Operations and Maintenance of Forensics Laboratories

**Background.** The DOJ has 13 forensic laboratories throughout the state, including 10 regional crime labs and three labs that provide services statewide. The state owns eight of the labs and the remainder occupies leased space. In the last decade, the department has constructed six new crime labs.

**Governor's Budget.** The Governor's budget proposal includes \$793,000 (\$572,000 one-time) from the General Fund to fund maintenance and repairs at the department's forensic laboratories. The ongoing monies will be used to support a reimbursement contract with the Department of General Services for custodial and management of the department's new forensic laboratory in Santa Rosa.

**Staff Comments.** Providing routine maintenance to state-owned facilities is essential to protection of the public investment. However, the DOJ has not provided the list of repairs it will fund with the one-time monies. Without this information, it is difficult to determine the need for this request.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Hold this issue open.
- Request that DOJ submit, before the May Revision, a list of special repairs it will fund with these monies.

## 8. California Witness Protection Program

**Background.** The California Witness Protection Program provides state funds to local district attorney's to finance the relocation and/or protection of witnesses and family members that have been threatened by criminals or criminal organizations.

In the 2005-06 budget year, the department funded 406 new cases, including 454 threatened witnesses and 646 family members. The department encumbered and allocated nearly all of the \$2.9 million authorized to reimburse local district attorney's for the relocation and protection efforts. This program has grown significantly over the past several years with a significant number of new cases submitted to the department annually. Furthermore, many of the cases stay active for multiple years and have significantly increased the number of active cases beyond the number of new cases.

**Governor's Budget.** The Governor's budget proposes \$223,000 from the Restitution Fund to support two new positions to fund increased workload related to the growth of the California Witness Protection Program. The department currently has one full-time staff and two part-time retired annuitants managing this program. The department is requesting two additional support positions to handle the increased workload related to this program. These new staff will more than double the administrative costs of this program from \$150,000 to \$383,000, which is just over 10 percent of the total proposed program expenditures.

Adding additional staff to support the administration of this program results in the department exceeding the 5 percent cap on administrative costs. This cap on administrative costs is required in statute; therefore, the department is proposing trailer bill language to amend current law that limits administrative costs for this program to 5 percent of all program costs.

The department also proposes to increase the local assistance funds available to support this program by \$500,000 from the Restitution Fund. This will increase the funds available for support of this program from \$3 million to \$3.5 million. Given the proposed administrative costs (\$383,000), this would leave \$3.1 million to be allocated to local district attorney's for relocation and protection services.

**Staff Comments.** Staff finds that this is not the only state program that provides state monies to local agencies for witness protection and assistance. Staff finds that the Office of Emergency Services (OES) also administers a program that is budgeted at \$11.9 million for grants that



provide victim and witness services. It is unclear to staff how these programs are coordinated. Furthermore, given the rising administrative costs to implement DOJ's program, there may be some economies of scale that can be realized by consolidating this program with the program implemented by OES.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Hold this issue open.
- Request that staff, LAO, and DOF gather additional information from DOJ and OES on the state's role in witness protection and develop a plan to improve the efficiency and effectiveness in which the state delivers witness protection efforts to local agencies.

## 9. Firearms License Check System

**Background.** Legislation (AB 2521, Jones), enacted in 2006, requires DOJ to keep a centralized list on the Internet of exempt federal firearms licensees. These include dealers, pawnbrokers, importers, or manufacturers of firearms with licensed premises in California that declare an exemption from state firearms dealer licensing requirements. The new law prohibits an exempt federal firearms licensee that is not on the DOJ's centralized list from importing or receiving firearms. The law also requires DOJ to assess an annual fee (\$115) upon exempted federal firearms licensees to maintain the list and ensure compliance with the law.

**Governor's Budget.** The Governor's budget proposal includes \$83,000 from the Dealers' Record of Sale Fund to add one permanent position to implement AB 2521. This project required a Feasibility Study Report, which has been submitted to and approved by the Department of Finance.

**Staff Comments.** The department estimates that there are about 3,200 federal firearms licensees and that about 800 are exempt. The fiscal analysis prepared when the law was passed by the Legislature estimated that the fees would result in about \$92,000 annually to the Dealers' Record of Sale Fund. The analysis also estimated that the department would only need about \$44,000 in the first year of implementation since the bill does not go into effect until January 1, 2008.

**Staff Recommendation.** Staff recommends that the Subcommittee approve this budget proposal.

## 10. Deputy Attorney General IV Salary Increase

**Background.** The Supervising Deputy Attorney Generals received a 5 percent pay differential to help address the compaction issue at the Attorney General's office that was inhibiting the department's ability to fill supervisor positions.

**Governor's Budget.** The Governor's budget proposal includes \$1.7 million (\$951,000 General Fund) to support a 2.5 percent pay differential for the non-supervising attorneys in the department's Deputy Attorney General IV classification.

**LAO Recommendation.** The LAO recommends that the Legislature reject the Governor's budget proposal to narrow the pay differential between the high-level attorneys and supervisors at DOJ. The LAO notes that a reduced pay differential could make it more difficult for the state to recruit and retain supervisors and would set a bad precedent that could eventually result in expensive additional pay raises for other state attorneys. Furthermore, the LAO recommends that salary increases to address recruitment and retention and other problems be discussed as part of the collective bargaining process. The LAO further notes that the memorandum of understanding for attorney salaries is set to expire on June 30, 2007.

**Staff Comments.** Staff finds that salary compaction is an issue that has impacts across state government. Last year, in recognition of this problem, a 5 percent pay differential was proposed for the Supervising Deputy Attorney General classification. This proposal would increase compaction and reverse the pay differential created last year. Furthermore, staff finds that it is appropriate for this issue to be handled in the collective bargaining process.

**Staff Recommendation.** Staff recommends that the Subcommittee adopt the LAO recommendation and reject this budget proposal.

## 11. Two-Party Contracts

**Background.** The DOJ represents various state agencies in litigation. The department often must enter into contracts for expert witnesses and investigators in supporting this litigation. Up until 2004-05, the DOJ prepared and paid external contracts for expert witnesses and other contracts needed to support litigation. These contracts would then be reimbursed by the appropriate state agency involved in the litigation. These contracts are referred to as two-party contracts.

However, in 2004-05, DOJ discontinued the use of two-party contracts because of the structural deficit it faced in its Legal Services Revolving Fund. This deficit was the result of some state agencies failing to reimburse DOJ for its expert contracts. The DOJ then discontinued the use of two-party contracts and instead established a three-party contract process. The three-party contract process requires the state agency client, DOJ, and the vendors all be parties to a contract. This process also makes the state agency client directly responsible for paying the contract. This significantly reduced the structural deficit in the DOJ's Legal Services Revolving Fund.

**Governor's Budget.** The Governor's budget proposes \$9.4 million for the Legal Services Revolving Fund to implement a two-party contract process to allow the DOJ to enter into contracts directly with expert witnesses, consultants, investigators, court reporters, and other vendors whom are hired to assist in litigation on behalf of DOJ's reimbursable state agency clients. Approximately \$6.2 million would be allocated to the Civil Law Division and \$3.3 million for the Public Rights Division.

**Confidential Contracts.** Several stories in the newspapers earlier this year exposed that more than 1,700 contracts labeled confidential and, therefore, shielded from public view, were improperly labeled by DOJ. The contracts that were mislabeled as confidential were valued at

over \$100 million. The department indicated at the time that it would take steps to immediately correct the reporting program.

**Staff Comments.** Given the department's recent history in improperly managing its contracts, it is unclear why additional discretion in contracting should be granted. Furthermore, the department eliminated two-party contracting because of budgetary problems it faced several years ago that resulted in significant increases in the department's reimbursement rates. Nevertheless, staff finds that two-party contracts are more convenient for DOJ and may be timelier in some cases. However, staff also finds that it may be appropriate to develop standards and processes to guide the department in its contracting processes.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Request that DOJ provide information, as soon as possible, on what actions it has taken to avoid mislabeling contracts as confidential.
- Request that staff, the department, LAO, and DOF to develop a proposal for improving the transparency of the department's contracting process, including proper labeling of contracts as confidential and allowing for limited two-party contracting under certain conditions.

## 12. Correctional Law: Habeas Corpus Lawsuits

**Background.** Currently, the Correctional Law Section within the Civil Division of DOJ performs two types of work for the California Department of Corrections and Rehabilitation (CDCR). First, they defend the state in state and federal correctional habeas corpus litigation and second, they defend the state in civil litigation and class action cases. The habeas corpus litigation can be divided into three categories: (1) challenges to the denial of parole to inmates sentenced to life imprisonment; (2) matters relating to parole revocation such as timeliness of revocation hearings, sufficiency of evidence, or due process issues; and (3) other issues such as challenges to disciplinary hearings, sentence credit calculations, and conditions of confinement. Over half of the habeas corpus workload is related to "lifer" parole denials.

Federal habeas corpus cases have increased significantly in the last several years; in part, due to a significant increase in the number of parole hearing for life inmates held by the Board of Parole Hearings. Furthermore, inmates no longer need permission from the court before filing federal habeas corpus appeals per the federal court's *Rosas* decision. This change is expected to lead to a large number of appeals of federal habeas corpus cases.

**Governor's Budget.** The Governor's budget proposal includes \$4.8 million from the General Fund to establish 31 new positions (16 attorneys) to support the increase in federal habeas corpus workload and anticipated federal habeas corpus appeal workload.

The Governor's budget proposal would also create a new Correctional Writs and Appeals Unit within the Criminal Law Section and would transfer the new and existing staff working on the habeas corpus workload to this unit. The department indicates that this move would better align these staff in the appropriate unit of the department.

**LAO Recommendation.** The LAO recommends that the Governor's budget proposal to fund additional habeas corpus litigation be reduced by \$1.4 million General Fund. The LAO analysis finds that the workload data provided only justifies an additional ten attorneys, which is four attorneys fewer than requested in the budget proposal. Therefore, the LAO's recommendation would reduce the Governor's proposal by nine positions (four attorneys) and \$1.4 million in General Fund.

**Staff Comments.** Staff finds that this proposal would almost double the legal staff currently working on the habeas corpus workload. Furthermore, while staff finds that the federal habeas corpus workload has increased, it is not clear that the workload will continue to increase by nearly 50 percent in both the current and budget years. This is consistent with the LAO's findings.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Approve the LAO recommendation to reduce the department's budget proposal by \$1.4 million and nine positions (four attorneys).
- Approve the budget proposal to transfer new and existing staff working on habeas corpus workload to the new Correctional Writs and Appeals Unit within the Criminal Law Section.

### 13. Correctional Law: Class Action and Civil Lawsuits

**Background.** Currently, the Correctional Law Section within the Civil Division of the AG's performs two types of work for the California Department of Corrections and Rehabilitation (CDCR). First, they defend the state in state and federal correctional habeas corpus litigation and secondly, they defend the state in civil litigation and class action cases.

Civil suits against CDCR are brought by individual inmates or parolees seeking damages or injunctive relief for alleged violations of their civil rights.

Class actions are suits brought by large groups of inmates or parolees (often exceeding 10,000 class members) challenging conditions or policies affecting inmates or parolees. Class actions can often last decades, as once liability is determined the cases usually move into a post judgment of post settlement enforcement stage. Currently, there are 25 class action lawsuits filed against CDCR.

**Governor's Budget.** The Governor's budget proposal includes \$2.2 million from the General Fund to establish 13.4 positions (8.2 attorneys) to defend CDCR in various class action and civil lawsuits.

**Staff Comments.** Staff finds that this proposal would increase the number of attorneys currently working on these cases by about 60 percent. However, the department has indicated that in the past it has had to direct CDCR to retain private counsel for some cases that DOJ could not handle because of staffing. Furthermore, it is unclear what role DOJ staff play in the department's compliance with settlement agreements. The CDCR is currently trying to comply with several special masters and one Receiver to implement complicated settlement agreements.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Hold this budget proposal open.
- Request that the department provide information on which class action lawsuits are not being defended by DOJ.
- Request that the department provide additional information on what role DOJ plays in CDCR's compliance efforts with settlement agreements.

## 14. Energy Litigation

**Background.** The Attorney General created an Energy Task Force in January 2001 to investigate and litigate issues arising from the 2000-2001 electricity and natural gas crisis in California. The department continues to be engaged in numerous lawsuits and settlements related to the activities during the electricity and natural gas crisis. So far, the Attorney General and other state agencies have recovered over \$5 billion in losses and damages related to the crisis.

**Governor's Budget.** The Governor's budget proposal includes \$6 million from the Ratepayer Relief Fund to support 33 positions (15 attorneys) and \$1.5 million in expert contracts to continue with numerous pieces of litigation related to the California energy crisis. There is no other funding in the DOJ's base budget for these activities.

**Williams Energy Settlement.** Early on in the aftermath of the California energy crisis the DOJ settled a lawsuit with the Williams Energy Company. The terms of this settlement included the allocation of some cash funds (about \$69 million) to a new Alternative Energy Retrofit Account to be used to retrofit school and other public buildings with renewable energy and energy efficiency projects. After this initial settlement the Legislature enacted legislation that would direct future settlement monies to the Ratepayer Relief Account that is used to finance the energy litigation and investigations, reduce rates to ratepayers, and pay of the energy bonds issued during the energy crisis.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Hold this issue open.
- Request that DOJ provide additional information on the status of the Williams Energy Settlement monies deposited in the Alternative Energy Retrofit Account.

## 15. *Underwriters* Litigation – Stringfellow Toxic Waste Site

**Background.** Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) the state was found liable for the clean-up of the Stringfellow toxic dumpsite. An investigation by the DOJ revealed that between 1963 and 1978 the state's activities involving the Stringfellow site were covered by three dozen insurance policies. In order to get some coverage from these policies, the state sued five of its largest insurers (*Underwriters* lawsuit), which collectively provided 70 percent of the state's insurance coverage. In 2002, the state filed a related case (*Allstate* lawsuit) against its 26 remaining insurers which provided the remaining

30 percent of the state's insurance coverage. The *Underwriters* case has recovered more than \$121 million from various insurance providers.

**Governor's Budget.** The Governor's budget proposal includes \$4.2 million to continue funding specialist counsel with expertise in insurance coverage litigation and to support 2.6 positions to continue the Underwriters litigation.

**Underwriters Litigation Continues.** The Governor proposes \$4.2 million General Fund to maintain staffing to continue with a class action lawsuit against insurance companies referred to as the *Underwriters* litigation. This litigation is against insurance companies that reneged on insurance coverage held by the state on the Stringfellow hazardous waste dump, thereby leaving the state with significant outstanding costs to clean up this site. The DOJ has recovered more than \$120 million from insurance companies in this lawsuit thus far.

**Staff Recommendation.** Staff recommends that the Subcommittee approve this budget request as proposed.

## 16. Construction Related Litigation

**Background.** In the past, DOJ has authorized various state departments to retain private counsel to handle complex construction litigation and arbitration matters. However, in 1999, DOJ formed its own small construction litigation team to develop expertise within DOJ on construction related litigation.

The voters approved \$42.7 billion in bonds in the November 2006 election. These bonds will result in a significant amount of new construction that may increase the need for DOJ to engage in litigation related to construction contracts. Furthermore, the Governor has also proposed \$13.7 billion in additional bonds to support a second phase of his Strategic Growth Plan.

**Governor's Budget.** The Governor's budget proposes \$549,000 from the Legal Services Revolving Fund to support 3.3 positions (two attorneys) to handle additional construction related litigation. The DOJ projects that the majority of these additional resources are needed for additional construction litigation support for the California Department of Corrections and Rehabilitation's proposed prison construction projects.

**Staff Comments.** Staff finds that because of the numerous infrastructure bonds that were approved in the November 2006 election, there may be an increase in construction-related litigation. However, the department indicates that all of the additional litigation will be related to corrections related construction. To date, the Legislature has not acted upon the Governor's budget proposal to add additional capacity to the prison system.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Hold this issue open.
- Request that DOJ provide additional information to the Subcommittee, as soon as possible, regarding the workload it projects related to construction litigation.

## 17. State Unemployment Tax Act Litigation

**Background.** Unemployment insurance benefits are funded by taxes that are assessed on employers at rates commensurate with unemployment insurance benefit awards paid to their ex-employees. Therefore, employers with high unemployment activity pay higher unemployment tax rates.

State Unemployment Tax Act dumping occurs when employers transfer (on paper) a large number of employees from an entity whose unemployment insurance tax rate is high, as a result of its poor claims history, into a newly formed or acquired entity with a lower tax rate. For example, a large company with a high unemployment insurance tax rate will purchase a small company with a relatively lower rate and transfer the employees in the large entity to the small entity in order to pay a lower rate of unemployment insurance.

The Employment Development Department (EDD) has issued 44 State Unemployment Tax Act dumping assessments totaling over \$180 million. Employers challenging these assessments file petitions before the California Unemployment Insurance Appeals Board. However, if they cannot be resolved before the board, the matters then go to Superior Court. The DOJ represents the department when these cases go beyond the administrative proceeding at the Board.

**Governor's Budget.** The Governor's budget proposes \$839,000 from the Legal Services Revolving Fund to support 4.9 positions (three attorneys) to handle additional State Unemployment Tax Act dumping cases. The DOJ estimates that there will be an increase in the number of State Unemployment Tax Act dumping cases that will end up in Superior Court annually. The EDD estimates that there will be about ten cases annually that will require DOJ litigation support.

**Staff Recommendation.** Staff recommends that the Subcommittee approve this budget request as proposed.

## 18. Child Support Enforcement – Technical Adjustment

**Background.** The Child Support Enforcement Section at DOJ provides legal services to carry out the objectives of the federal Title IV-D child support enforcement program. Among other things, DOJ provides legal support for child support appeals in state and federal appellate courts and provides legal advice to the California Interstate Registry, which operates pursuant to the Uniform Interstate Family Support Act.

Currently, the DOJ and the Department of Child Support Services (DCSS) annually enter into an interagency agreement. This interagency agreement specifies that one-third of the federal funds provided for Title IV-D be allocated to DOJ and the remaining two-thirds be allocated to the DCSS. This agreement was required because federal rules did not allow DOJ to bill DCSS for services consistent with how the DOJ typically recovers monies from state agencies for legal services. The Federal Office of Management and Budget changed this rule in 2005, thereby allowing DOJ to bill DCSS for legal services provided by DOJ.

**Governor's Budget.** The Governor's budget proposes a technical adjustment to eliminate the existing interagency agreement and to bill DCSS in a manner consistent with how DOJ typically recovers monies from state agencies for legal services provided. Specifically, the technical adjustment requires the following:

- Transfer of \$348,000 General Fund from DOJ to DCSS.
- Eliminate \$606,000 in DOJ reimbursement authority.
- Augment DOJ's Legal Services Revolving Fund authority by \$954,000.

**Staff Recommendation.** Staff recommends that the Subcommittee approve this budget request as proposed.

## 19. California Highway Patrol – *Pitchess* Motions

**Background.** *Pitchess* motions are the procedure used to balance the rights of peace officers in keeping their personnel information confidential with the rights of litigants in accessing information that may be relevant to court cases. A party to a lawsuit must file a *Pitchess* motion to seek court review of peace officer personnel records to determine whether the records contain any relevant information.

Some *Pitchess* motions directed at the California Highway Patrol (CHP) are made in cases in which the CHP is already a party to the cases and CHP counsel handles the *Pitchess* motions as part of the overall litigation. However, there are many *Pitchess* motions directed at CHP for cases in which CHP is not a party and is not represented by CHP counsel. The CHP has been using non-lawyer positions to handle these motions. However, in July 2006, the CHP determined that this had resulted in multiple mistakes and did not satisfactorily protect the rights of its peace officers.

**Governor's Budget.** The Governor's budget proposes \$1.1 million from the Legal Services Revolving Fund to support 6.6 positions (four attorneys) to handle the litigation of *Pitchess* motions for the CHP in cases where the CHP is not a party in the case. The positions will be added to the Employment Regulation and Administration Section of the department.

**Staff Recommendation.** Staff recommends that the Subcommittee approve this budget request as proposed.

## 20. Natural Resources and Environmental Protection Litigation

**Background.** The DOJ is currently engaged in the litigation or settlement proceedings related to the following significant cases in the area of natural resources and environmental protection. These cases are expected to continue into the budget year:

- **Quantification Settlement Agreement** – Litigation related to the Quantification Settlement Agreement including *Imperial Irrigation District v. All Interested Persons* and eight other related cases.



- **Delta Smelt Biological Opinion** – *Natural Resources Defense Council v. Norton* challenging the 2005 Delta Smelt Biological Opinion issued by the U.S. Fish and Wildlife Service.
- **Friant Dam Settlement** – *Natural Resources Defense Council v. Rodgers* challenging the federal operations of Friant Dam on the San Joaquin River.
- **Fire Suppression** – The department currently has 30 active cases to recover fire suppression costs from the responsible party.
- **Greenhouse Gas Emissions from Autos** – The department is currently defending the state's adoption of legislation (AB 1493, Pavley), in 2002, that requires the Air Resources Board (ARB) to adopt regulations to achieve a reduction of greenhouse gas emissions from vehicles manufactured in model year 2009 and later.

The department also expects the following new litigation may be brought in the budget year.

- **Leviathan Mine** – The Leviathan Mine site is owned by the state and the State Water Resources Control Board (SWRCB) is overseeing the clean up of the site. It is a highly polluted site in the Sierras that has been designated a Superfund site by the federal government. The liability alleged is based on the state's ownership of the mine, past actions taken by the state with respect to the mine, and a 1983 agreement the state entered into with a past owner/operator of the mine.
- **State Water Project** – This lawsuit stems from a dispute among State Water Contractors over the allocation of revenues and other benefits from the sale or other disposition of power from the Hyatt-Thermolito generation plant adjacent to Oroville Dam in the State Water Project.
- **Los Osos** – This community of Los Osos is a small community on the Central Coast that is served by individual septic systems that are polluting the groundwater and the coastal ocean waters. Efforts have been under way for several years to build a centralized sewer system to comply with the SWRCB prohibition against leach from the septic systems. Construction of this system was halted by the Board of Directors of the Los Osos Community Services District. The SWRCB is now initiating administrative actions against individual dischargers in violation of the prohibition.

**Governor's Budget.** The Governor's budget proposes \$3.9 million from the Legal Services Revolving Fund to support 16.4 positions (eight attorneys) on a three-year limited term basis to support extraordinary litigation related to natural resources and environmental protection. This includes \$1.5 million for external consultant funding for experts.

**Climate Change Litigation.** The 2006-07 Budget Act appropriated \$1 million in additional General Fund monies to DOJ for support of various efforts to pursue litigation related to climate change. Provision 11 of 0820-001-0001 directs that this money be "...available for litigation and expert witness costs associated with state actions to reduce greenhouse gas emissions, including the defense of actions taken by state energy agencies to reduce those emissions and the defense of Chapter 200, Statutes of 2002 (AB 1493, Pavley)."

Furthermore, the ARB requested an additional \$4.9 million to cover DOJ's costs of defending the AB 1493 (Pavley) regulations. Ultimately, \$3.4 million in unallocated special funds were allocated to the ARB in January for this purpose through the 9840 Item (For Augmentation for

Contingencies and Emergencies). The ARB was directed to fund the remaining \$1.5 million from their existing budget.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Hold this issue open.
- Request additional information on how the \$1 million General Fund allocated in the 2006-07 Budget Act has been allocated.
- Request an update on the status, timing, and costs of the defense of AB 1493 (Pavley).
- Request an update on the status of lawsuits related to the preservation of the Headwaters (the state's purchase of over 8,000 acres of old growth redwoods in Northern California).
- Request an updated list of new natural resource and environmental protection related lawsuits the DOJ is currently pursuing.

## 21. Redevelopment Agencies

**Background.** In 2005, the U.S. Supreme Court ruled in *Kelo v. City of New London* that it was not a violation of the federal constitution for a local government entity to take private property by eminent domain for “economic development” purposes as defined by Connecticut state law. While California’s law was already significantly more restrictive than Connecticut state law regarding when eminent domain could be used by redevelopment agencies found to be “blighted”, the Legislature enacted SB 1206 (Kehoe) in 2006 to further tighten the blight definitions in redevelopment law. The legislation also enhanced the role of the Attorney General in policing abuses of redevelopment law.

**Governor’s Budget.** The Governor’s budget proposal includes \$407,000 from the General Fund to support 3.3 new positions (one attorney) to implement the provisions of SB 1206. The department estimates that there are approximately 10 to 20 new redevelopment plans annually. The department will use these positions to review these plans and lawsuits filed by others and possibly engage in litigation if appropriate.

**Staff Comments.** Staff finds that the budget proposal is consistent with the fiscal analysis prepared when the new law was passed by the Legislature.

**Staff Recommendation.** Staff recommends that the Subcommittee approve the budget request.

## 22. Division of Gambling Control – Technical Fund Shift

**Background.** The Division of Gambling Control is mandated to conduct background investigations on all companies as well as individuals investing and/or providing financial support to casino owners to determine suitability. This responsibility is mandated through the California Tribal-State Gaming Compacts. The division is only responsible for the investigations, while the suitability determinations are made by the Gambling Control Commission.

Currently, the investigations are funded through a reimbursement contract with the Gambling Control Commission.

**Governor's Budget.** The Governor's budget proposal requests a permanent technical shift of \$893,000 from reimbursements to the Indian Gaming Special Distribution Fund. This will enable the department to be funded for its investigatory role directly from the Indian Gaming Special Distribution Fund instead of through a reimbursement basis with the Gambling Control Commission.

**Staff Comments.** It is unclear to staff why problems have arisen from the current funding arrangement that allows the Gambling Control Commission to reimburse DOJ for its investigatory role related to tribal gaming. Additional information is needed regarding why reimbursements have been directed to the General Fund in the past and not to the Special Distribution Fund as intended by the reimbursement arrangement.

**Staff Recommendation.** Staff recommends that the Subcommittee take the following actions:

- Hold this issue open.
- Request that the department provide additional information regarding the current reimbursement process, including why reimbursements have been directed to the General Fund.